

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Charles McClure and
Shirley McClure,
Plaintiffs

Case No. 1:07-cv-366-SJD-TSH
(Dlott, J.; Hogan, M.J.)

vs

Villas in the Park HOA d/b/a
Resource Property Management Co., et. al.,
Defendants

REPORT AND RECOMMENDATION

Upon payment of the \$350.00 FILING fee required for commencing a civil action, pro se plaintiffs Charles and Shirley McClure have initiated this action seeking an injunction to halt state court foreclosure proceedings against their property, located at 1290 Villa Parke, Ameila, Ohio 45102. (Doc. 1). As part of their litigation of this action, plaintiffs have filed a Motion for Petition for Writ of Habeas Corpus. (Doc. 3).

This matter is before the Court for a sua sponte determination of whether the petition should be summarily dismissed under 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, prior to the issuance of any order requiring defendants to show cause why the writ should not be granted. 28 U.S.C. § 2243 provides in relevant part: "A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, *unless it appears from the application that the applicant or person detained is not entitled thereto.*" (Emphasis added). Rule 4 of the Rules

Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, further provides in pertinent part: "If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified."

To the extent pro se plaintiffs seek federal habeas corpus relief in this action, their motion is subject to summary dismissal for lack of jurisdiction. The federal habeas corpus statutes give the United States district courts jurisdiction to review habeas corpus petitions only from persons "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §§ 2254(a) and 2241(c)(3) (emphasis added); see *Maleng v. Cook*, 490 U.S. 488, 490 (1989) (per curiam). It appears from the face of the motion that neither plaintiff/petitioner is "in custody" within the meaning of the federal habeas corpus statutes, 28 U.S.C. §§ 2241(c)(3) and 2254(a). See *Lehman v. Lycoming County Children's Services*, 458 U.S. 502 (1982). Plaintiffs' claims do not give rise to any issue that may be remedied in a federal habeas corpus proceeding. Plaintiffs' motion, therefore, is subject to summary dismissal pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

IT IS THEREFORE RECOMMENDED THAT:

Plaintiff's motion for Petition for Writ of Habeas Corpus be DENIED.

Date:

5/22/07


Timothy S. Hogan
United States Magistrate Judge

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NOTICE

Attached hereto is the Report and Recommended decision of the Honorable Timothy S. Hogan, United States Magistrate Judge, which was filed on ⁵5/22/07. Any party may object to the Magistrate's findings, recommendations, and report within (10) days after being served with a copy thereof or further appeal is waived. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all Parties, the Judge, and the Magistrate, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations, or report to which objection is made along with a memorandum of law setting forth the basis for such objection, (such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

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